

Service Date: February 26, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

IN THE MATTER of the Application of a	)	UTILITY DIVISION
Sprint Communications Company L.P.,	)	
Pursuant to 47 U.S.C. Section 252(e) of the	)	DOCKET NO. D97.8.160
Telecommunications Act of 1996 for	)	
Approval of its Interconnection Agreement	)	ORDER NO. 6030a
with U S WEST Communications, Inc.	)	

ORDER ON CONFORMING AMENDMENTS  
TO INTERCONNECTION AGREEMENT

I. Introduction and Procedural Background

1. U S WEST Communications, Inc. (U S WEST) and Sprint Communications Company L.P. (Sprint) negotiated an interconnection contract after Sprint requested contract negotiations pursuant to § 251 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the 1996 Act) . Sprint submitted the interconnection agreement, entitled "Negotiated/Arbitrated Agreement for Interconnection, Resale and Unbundled Elements" (the "Agreement") to the Montana Public Service Commission (Commission) for approval on August 28, 1997 pursuant to 47 U.S.C. § 252(e).

2. The Commission reviewed the Agreement as required by 47 U.S.C. § 252(e)(4).

The Commission was required to approve or reject the parties' Agreement, with written findings as to any deficiencies, no later than November 26, 1997. 47 U.S.C. § 252(e)(1) and (4). The Commission included such findings as to deficiencies in Order No 6030 and specifically stated which of these deficiencies could be amended pursuant to that Order. The sections which the Commission rejected with this proviso are: (1) Section 36.29 on dispute resolution, (2) Section 31.8.7 concerning the remedy for non-payment of undisputed billed amounts, (3) Section 31.5.7 on construction, and (4) the sections on customer authorization. The Commission's Order, however, includes an unqualified rejection of Section 36.38 relating to the "creditworthiness database" which the parties intended to establish with a mutually agreed upon third-party credit reporting agency. The Commission found that this section was not consistent with the public

interest, convenience and necessity, and that it discriminated against carriers who were not parties to the Agreement.

## II. Commission Decision

3. When parties execute an interconnection agreement and one or both parties submit it to the Commission for approval, the Commission must approve or reject it (in whole or in part) according to the standards in §252 of the 1996 Act--to determine if it discriminates against a carrier not a party to the agreement or is inconsistent with the public interest, convenience and necessity. The Commission can reject portions of the agreement, but it cannot require additional provisions.

4. In Order No. 6030 approving the Agreement, the Commission found that the terms in the parties' Agreement appeared to conform to the standards required by the 1996 Act, with the exception of five specific terms. The Commission rejected contract terms relating to dispute resolution, non-payment of undisputed billed amounts, construction, a credit worthiness database, and customer authorization. The Order provided in pertinent part:

26. Dispute Resolution - Section 36.29 beginning on p. 249 sets forth the parties' agreement pertaining to resolution of disputes arising under the Agreement. . . .

While the parties are free to provide for dispute resolution in this manner according to the 1996 Act, the resolution arrived at by the arbitrator may not be consistent with the public interest, convenience and necessity. The Commission concludes that this contract provision should be rejected because it does not provide for notification to the Commission of issues to be arbitrated or of the subsequent decision reached by the arbitrator. The public interest and the facilitation of market entry is better served by such notification. The parties may amend this section of the Agreement to include this language.

27. Remedy for Non-Payment of Undisputed Billed Amounts - Section 31.8.7

sets forth in detail the remedy for non-payment to U S WEST by Sprint. It provides that if Sprint fails to make payments of undisputed amounts on dates and times specified, U S WEST may, 30 days after providing written notice to Sprint, refuse additional applications for service and/or refuse to complete any pending orders for Sprint service at any time thereafter.

It further provides that if U S WEST does not discontinue services on the date specified in the notice and noncompliance continues, "nothing contained herein shall preclude U S WEST's . . . right to discontinue the provision of the services to Sprint without further notice. Sprint's non-payment to U S WEST, if not made pursuant to the terms of this section, could place Sprint's end user customers' services in jeopardy of being disconnected through no fault on their part.

28. This section contains no provision for notification to the Commission of a pending disconnection of service to an indeterminable number of end users. . . . It is not consistent with the public interest to permit U S WEST to terminate service to Sprint's end users with no notification to the Commission. The Commission rejects § 31.8.7 of the parties' Agreement. The parties may amend this section of the Agreement to include a provision that allows for a reasonable notification to the Commission that will afford the Commission time in which to take any appropriate action to protect end users.

29. Construction - Section 31.5.7 of the Agreement (p. 174-75) . . . . The Commission finds that this provision could conflict with the public interest and should be rejected because there may be circumstances which arise where U S WEST, pursuant to its duties as a carrier of last resort, is required by law to construct facilities. The parties may amend this section to address this concern. The agreed upon terms may apply for instances where U S West has no carrier of last resort responsibilities.

30. The Creditworthiness Database: (Section 36.38 on pp. 265-66) This section provides that both Sprint and U S WEST will make available certain customer payment history information--for each person or entity that applies for local service or intraLATA toll services from either carrier--to a mutually agreed upon third-party credit reporting agency. This section would permit customer credit information to be reported to a credit reporting agency without the customer's authorization and should be rejected.

31. If the database is used for determining whether a deposit should be required of the applicant, it is not consistent with Commission rules. It includes information that is pertinent to some of the Commission's deposit rules, but not to all of them. . . .

32. Further, it establishes a means for Sprint and U S WEST--but no other telecommunications provider--to obtain useful information about potential customers. Such a database, if implemented, should be available to all

telecommunications carriers and should be established by a proceeding which includes industry participants, consumer representatives and other interested parties.

33. The Commission rejects this section because is not consistent with Commission regulations, it is otherwise not consistent with the public interest, convenience and necessity, and it discriminates against carriers who are not parties to the Agreement.

34. Customer Authorization: Sections 31.3.11.1 on p. 169-70 applies to the unauthorized switching of providers (slamming). . . .The Commission rejects this entire section because it does not include and does not comply with Montana law and Commission rules on slamming. The parties may amend these sections to include Montana law and Commission rules. Order No. 6030, pp. 12-17 (Nov. 25, 1997) (emphasis supplied).

5. The emphasis provided in the above-quoted paragraphs from Order No. 6030 clearly stated which sections could be amended to conform to the Order. The section on the creditworthiness database did not include such a statement. In fact, the Order clearly stated that such a database should be available to all telecommunications carriers and should be established by a proceeding which would include industry participants, consumer representatives and other interested parties. Commission rules presently provide standards for requiring deposits or other forms of guaranteeing payment of subscriber accounts.

6. The parties' amendment to their multi-state agreement includes the following provision which purports to comply with Minnesota and Montana approval orders:

For the state of Minnesota, the provisions of Section 36.38 do not apply (approval Order). The following Language applies to the state of Montana only: (Final Order Approving Interconnection Agreement, 11-26-97, para. 30) Each party will continue to follow its own individual policy for reporting credit worthiness to third parties.

The Agreement and the Amendment do not include a statement of what these policies are.

Therefore, the Commission will not approve this language when Montana law sets forth clear guidelines for requiring credit guarantees. The Minnesota reference in the above-quoted amendment provision complies fully with Order No. 6030 which rejected Section 36.38. That statement is the effect of Order No. 6030 as it relates to Section 36.38--whether or not it is included in an amendment. The

Commission concludes that the revised amendment to Section 36.38 should be rejected.

7. Conforming amendment on Customer Authorization: The Commission rejected Section 31.3.11.1, including its subsections, because the provisions did not conform to Montana statutes and Commission regulations on "slamming." The Amendment to the multi-state agreement contains the following specific language to address this concern:

The following language applies to Montana only:

Final Order Approving Interconnection Agreement, 11-26-97, para. 30.) The provisions and rules of this section as pertaining to customer authorization and "slamming" (unauthorized changes to customer carrier selection) will conform to the specific rules of the state of the Montana commission and state law.

We recognize that the parties have negotiated their interconnection agreement to apply to all states covered by the agreement. Although it would have been preferable to include specific language conforming to Montana law, this section as amended appears to adequately address the Commission's concern that no provisions contrary to Montana law be included in the Agreement. In any case, such a contract term is void and unenforceable.

8. Conforming amendment on Construction: The Commission rejected Section 31.5.7 of the parties' Agreement because it did not consider U S WEST's "carrier of last resort" obligations which might require the construction of new or enhanced facilities. The parties amended this section as follows:

The following Language applies to the state of Montana only: (Final Order Approving Interconnection Agreement, 11-26-97, para. 29.) This provision applies only where U S WEST has no "carrier of last resort" obligations as assigned by the commission which require by law the construction of facilities.

Although this section appears to address the Commission's concerns about "carrier of last resort" responsibilities on the part of U S WEST, it does not adequately comply with the Commission's Order. We stated that there may be instances where U S WEST is required to construct facilities because of its duties as a "carrier of last resort." Those duties are not specifically stated in Montana statutes, precedential court rulings, Commission regulations, or Commission Orders.

Therefore, the Commission has not technically "assigned" these duties to any carrier for any area of Montana. The fact that they are not legally assigned does not preclude their being "de facto" obligations. The amendment would conform adequately if the words "as assigned by the commission" are deleted. As it is, it should be rejected.

9. Conforming amendment on Remedy for Non-payment of Undisputed Billed Amounts: The Commission rejected Section 31.8.7 because it failed to provide notification to the Commission of potential termination of service to Sprint which could affect all Sprint local exchange service customers if Sprint was subject to termination for non-payment. The parties have agreed to the following amendment:

The following Language applies to the state of Montana only: (Final Order Approving Interconnection Agreement, 11-26-97, para. 29.) U S WEST will comply with Montana state rules and notification requirements that will afford the Commission adequate time to take any appropriate action to protect end users prior to terminating service to Sprint.

We stated in Order No. 6030, "The parties may amend this section of the Agreement to include a provision that allows for a reasonable notification to the Commission that will afford the Commission time in which to take any appropriate action to protect end users." The parties' amendment to Section 31.8.7 would be perfectly acceptable if the Commission had rules and notification requirements in place. As there are none, the amendment to Section 31.8.7 is rejected.

10. Conforming amendment on Dispute Resolution: The Commission rejected Section 36.29 because it did not provide for notification of pending disputes to the Commission if the Commission was not the arbitrator of them. We had no problems with the dispute resolution procedure agreed to by the parties, but expressed concerns for the public interest and the facilitation of market entry when a resolution arrived at by the arbitrator is not consistent with the public interest, convenience, and necessity. The parties have amended their agreement to add the following for Montana:

The following Language applies to the state of Montana only: (Final Order Approving Interconnection Agreement, 11-26-97, para. 29.) Notice will be given the Montana PUC regarding all issues to be arbitrated and/or changes to be made to this agreement affecting Montana subscribers or business for approval to ensure public interest and market entry are fairly considered. This amended provision does not state who will give notice, when notice will be given, and it is otherwise vague. The amendment should be rejected as it does not adequately satisfy the Commission's concerns for receiving notice about issues to be arbitrated by non-commission arbitrators.

### III. Conclusions of Law

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. U S WEST is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA. Sprint is a provider of regulated interexchange telecommunications

services in the State of Montana, and will also be regulated when it begins offering local exchange service in Montana as a competitive local exchange carrier.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. The Commission has jurisdiction to approve amendments to the Interconnection Agreement negotiated by the parties and submitted to the Commission for approval according to Section 252(e)(2)(A). Section 69-3-103, MCA.

4. Commission approval of interconnection agreements and their amendments is subject to the requirements of federal law as set forth in 47 U.S.C. § 252. Section 252(e) limits the Commission's review of a negotiated agreement to the standards set forth therein for rejection of such agreements.

#### IV. Order

THEREFORE, based upon the foregoing, it is ORDERED that the conforming amendments to the interconnection Agreement between U S WEST Communications, Inc. and Sprint Communications Company, L.P., are approved and rejected as discussed herein, and as follows:

1. The conforming provisions affecting dispute resolution, remedy for non-payment of undisputed billed amounts, construction, and the creditworthiness database are rejected and the sections they were intended to amend remain stricken from the Agreement.

2. The conforming provision on customer authorization is approved.

DONE AND DATED this 24th day of February, 1998, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

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Dave Fisher, Chairman

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Nancy McCaffree, Vice Chair

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Bob Anderson, Commissioner

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Danny Oberg, Commissioner

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Bob Rowe, Commissioner

Attest:

Kathleen M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.